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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 IN RE FACEBOOK BIOMETRIC
13 INFORMATION PRIVACY LITIGATION

14
15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS

17 _____
18 FREDERICK WILLIAM GULLEN, on behalf
of himself and all others similarly situated,

19 Plaintiff,

20 v.

21 FACEBOOK, INC.,

22 Defendant.
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Master Docket No.: 3:15-CV-03747-JD

**DEFENDANT FACEBOOK, INC.'S
REPLY IN SUPPORT OF ITS
ADMINISTRATIVE MOTION TO
AMEND THE SCHEDULING ORDER**

Hon. James Donato

Case No. 3:16-cv-00937-JD

1 Pursuant to Civil Local Rule 7-11, Defendant Facebook, Inc. (“Facebook”) respectfully
2 seeks leave to submit this reply in support of its administrative motion to amend the scheduling
3 order to conform to the sequence set forth by the Court at the September 7, 2017 status
4 conference.

5 Plaintiffs’ claim (Dkt. 225 at 1) that Facebook never raised expert concerns specific to
6 class certification is directly contradicted by the record. Facebook expressly set forth its position
7 that “expert discovery should be completed before these [class certification and summary
8 judgment] motions are filed” in the joint Case Management Statement filed with the Court. Dkt.
9 218 at 3. In support of its position, Facebook cited the virtual certainty that plaintiffs would rely
10 on expert testimony “in moving for class certification and/or summary judgment” and authorities
11 recognizing that *Daubert* motions are appropriately heard in connection with class certification.
12 *Id.* at 3-4 (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011); *McLaughlin*
13 *on Class Actions* § 3:14 (10th ed. 2013)). In neither the Case Management Statement nor their
14 opposition to Facebook’s administrative motions did plaintiffs dispute that they would rely on
15 expert testimony in moving for class certification or that the Court should hear *Daubert* motions
16 in connection with class certification. *Id.* at 4.

17 Furthermore, plaintiffs’ claim that class certification should be “straightforward” (Dkt.
18 225 at 1) is belied by their own statements to the Court at the September 7, 2017 hearing. In
19 their class certification motions, plaintiffs have the burden of proving that at all times and with
20 respect to all potential class members, Facebook’s technology operated in a way that brought it
21 within the scope of BIPA. As plaintiffs represented to the Court, “[t]he sheer volume of
22 [Facebook’s] source code and its complexity, as [they] learned from [their] experts . . .
23 necessitated eight weeks” of review so that they could present “expert opinion . . . how the
24 technology works.” Dkt. 222 at 20-21.

25 Accordingly, Facebook respectfully requests that its motion to amend the scheduling
26 order—which would not change the May 21, 2018 trial date or other dates—be granted.
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1 Dated: September 27, 2017

MAYER BROWN LLP

2 By: /s/ John Nadolenco
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